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IN THE SUPREME COURT

OF THE STATE OF UTAH

D. CLARK WILLIAMS, Plaintiff and Respondent, v. MERRILL L. OLDROYD, GERALD CARTER, and JOHN A. CANTO, Defendants and Appellants.	Case No. 15313

REPLY BRIEF OF APPELLANTS

Appeal from the Judgment of the Fourth Judicial District Court for Utah County, Honorable Allen B. Sorensen, Judge

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FILED

FEB 23 1978

Clerk, Supreme Court, Utah

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ARGUMENT

POINT I

THE TRIAL COURT ERRED IN REFUSING TO REFORM THE DEED IN ACCORDANCE WITH THE INTENTION OF THE PARTIES.

Respondent asserts that appellants have not established by "clear and convincing evidence" that the parties were mutually mistaken in the execution and delivery of an instrument at variance with their intent, nor that appellants have not been guilty of neglect in the execution of the deed, citing the standard set forth in Sine v. Harper, 118 Utah 415, 222 P. 2d 571, 581 (1950). (Respondent's Brief, p. 11) The Sine v. Harper standard was later interpreted and refined by this Court, as stated in Appellants' Brief at pp. 15-16, in Naisbitt v. Hodges, 6 Utah 2d 116, 307 P. 2d 620 (1957), as follows:

> All that is required is that evidence exists whereby this court can say that the trial judge acted as a reasonable man in finding that the proof of the fact asserted is greater than a mere preponderance. 6 Utah 2d at 122, 307 P. 2d at 624.

Conversely, appellants' burden of "clear and convincing evidence" to support reformation of this deed is to demonstrate that proof of the facts supporting reformation is greater than a "mere preponderance", and that the trial court acted unreasonably in refusing to fairly consider such proof.

Respondent first asserts that the erroneous deed description is merely a "latent ambiguity" which does not require reformation. Yet the trial court already reformed the deed by shifting the deed description northward so as to border the edge of U.S. Highway 6 on the south, and, in turn, by moving the north line northerly an equal distance. By

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referring to Exhibit "21", reproduced as Appendix "1" in respondent's brief, it is readily apparent that the rectangular parcel found by the court, bordering along the edge of the highway, crosses over and embraces substantial land lying north and west of the railroad tracks and right-of-way of the Denver and Rio Grande Railroad! Such property was never and could never have been used by appellants and their predecessors in interest for partnership and, later, corporate purposes, and bears no resemblance whatsoever to the property actually intended to be conveyed, and subsequently occupied and used by appellants and their predecessors in interest for over twenty (20) years.

Clearly, therefore, the parties were mutually mistaken as to the description of the property intended to be conveyed. In evaluating a claim for reformation of a deed, the controlling concern is the intention of the parties at the time of conveyance. Scott v. Hansen, 18 Utah 2d 303, 422 P. 2d 525 (1966); 23 Am. Jur. 2d Deeds § 159 (1965). Thus, where, by respondent's representations, even though made after the fact, to appellants and their predecessors in interest, it is shown that respondent intended to convey all the property within the yellow lines depicted on Exhibit "21", and that appellants relied on those representations in their acquisition and subsequent use and occupation of that property, then such intent requires that the deed be reformed to conform thereto.

Respondent asserts that there is no evidence in the record that Skyline Enterprises, Inc., rather than respondent hired

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allowed full occupation and use of the disputed property. Apparently, respondent has not examined the record carefully. His own expert realtor witness, Esbern Baadsgaard, testified that the entire property in question was used by appellant Gerald Carter and his predecessors in interest, clear back to 1954 when operated by Skyline Enterprises, Inc. (Tr., p. 197, lines 12-28) This fact was confirmed by each of the appellants and by their predecessors in interest: Mr. D. Lloyd Horlacher (Tr., pp. 220, 226-27), Mrs. Elda Horlacher (Tr., pp. 258, 259, 260, 261), Dr. Merrill L. Oldroyd (Tr., p. 240), Mr. John A. Canto (Tr., pp. 279, 280), and Mr. Gerald Carter (Tr., pp. 294, 295, 297, 298, 316-317). Even Dennis Prince, one of the original partners in the Skyline Enterprises business, paid rent to appellant Gerald Carter for camping space in the disputed area (Tr., p. 299), recognizing Carter's right, as successor in interest of the business property, to occupy the disputed area.

Respondent further asserts that he did not make the boundary representations claimed by appellants. Yet he carefully avoids mentioning the fact that in his pleadings, under his Third and Fourth Defenses in his Reply to Defendants' Counterclaim, he specifically admitted making the aforesaid representations, as follows:

THIRD DEFENSE

> As a separate and affirmative defense, plaintiff alleges that any statement or communication made by him relative to any land claimed by the defendants within Section 14, Township 10 South, Range 6 East, Salt Lake Meridian, was true and correct. (Emphasis added.)

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FOURTH DEFENSE

As a separate and further affirmative defense, plaintiff alleges that any statement or communication made by him relative to any land claimed by defendants within Section 14, Township 10 South, Range 6 East, Salt Lake Meridian was made in good faith and was made with probable cause for believing the truth of any statement or communication made. (Emphasis added.)

Respondent is bound by these express admissions in his pleadings, and is estopped from denying that such representations were made. Months later, at time of trial, for respondent to suddenly change his mind and decide that he did not make such representations after all, in no way affects the binding admissions previously made in his own pleadings.

These admissions by respondent, coupled with the testimony about the representations made by him to Mr. Horlacher (Tr., pp. 207, 215), Mrs. Horlacher (Tr., pp. 260-261), Dr. Oldroyd (Tr., pp. 238-239), and Gerald Carter (Tr., pp. 300-304), conclusively establish the reality of the representations, the reliance of the parties thereon, and the intention of the parties in contracting with respect to the property. In comparing this overwhelming weight of the evidence to respondent's lame attempt to deny what he had already admitted in his pleadings, the trial court clearly erred in not finding clear and convincing evidence to support reformation of the deed.

Instead, the trial court sustained objections to testimony about those representations on the ground that, at the time of sale, respondent did not own the land. (Tr., p. 208) There appears to be no legal authority for the proposition that only a landowner can make competent representations with

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respect to boundary lines of property, nor that such representations can be made by a grantor only to his immediate grantee, and respondent cites none in his brief. Respondent was a previous owner of the property at the time he made the representations, and was, at the time, the owner of the contiguous tract, and he admitted in his own pleadings the truth and accuracy of the representations made.

The trial court did allow similar testimony to subsequently come in, but with tongue in cheek, and was obviously still of the same opinion expressed in its prior ruling. (Tr., pp. 214, 237, 261) The court was clearly influenced by its earlier ruling, and persisted in its reasoning expressed therein. By its obvious refusal to fairly consider this clearly competent evidence in its judgment, the court committed reversible error.

In sum, the testimony of appellants clearly preponderates and there is no credible evidence to sustain the decision of the trial court supporting the respondent's position in this case. Appellants are fully aware of their responsibility to establish error made by the trial court, and respectfully submit that the refusal by the trial court to fairly consider the great preponderance of testimony concerning respondent's representations, and its adherence to a false premise, unsupported by legal authority, so colored the court's decision as to amount to prejudicial and reversible error.

Respondent also asserts that appellants and their pred-

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ecessors in interest were "inexcusably negligent" with respec to the erroneous deed description. Yet respondent himself accepted the faulty description both as grantor and as one of the grantees in the original deed to the partnership in 1954. None of the parties involved ever used and occupied the land across the highway on the south or across the railro tracks on the north and west which was purported to be conve by that erroneous description. Rather, appellants and their predecessors in interest relied upon the representations made to them by respondent concerning the actual boundaries of the property, and used and occupied the land up to those boundaries. They, as lay grantees, were never given any reason to doubt the accuracy of the deeded description, parti larly where no survey had ever established whether the metes and bounds description conformed to the physical boundary lines actually occupied and claimed by them.

Inexcusable neglect is a question to be determined by the facts and circumstances of each individual case. George v. Fritsch Loan & Trust Co., 69 Utah 460, 256 P. 400 (1927); Peterson v. Eldredge, 122 Utah 96, 246 P. 2d 886 (1952); see Annot., 81 A.L.R. 2d 7, 31-33 (1962). The trial court made no such finding, and there certainly was no prejudice to the respondent, where he himself, as grantee, accepted the faulty description prepared by himself as grantor. If any negligence was present, it was attributable to respondent. Where he clearly intended, as evidenced by the representation he admittedly made, to convey all the property bounded with

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the yellow lines depicted on Exhibit "21", and appellants and their predecessors in interest, in reliance thereon, subsequently used and occupied the entire disputed area, the deed should be reformed to conform to the intention of the parties.

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POINT II

THE TRIAL COURT ERRED IN FAILING TO FIND A BOUNDARY LINE ESTABLISHED BY ACQUIESCENCE ALONG THE NATURAL AND MAN-MADE BOUNDARIES OF THE PROPERTY.

Respondent asserts that appellants have failed to establish the presumption that a binding boundary line by acquiescence existed between the parties. On the contrary, appellants have clearly shown, by the great weight of the evidence in this case, that such a boundary by acquiescence existed, and have firmly established that boundary on all four required points:

First, with respect to a visible line, the foregoing discussion under Point I, supra, is pertinent to this issue. Despite respondent's claim that no such evidence is present therein, the record clearly establishes that ever since May 22, 1954, when respondent conveyed the property to himself and others as partners doing business under the name and style of Skyline Enterprises, he and his colleagues as grantees and appellants as their successors in interest, for a period of more than twenty (20) consecutive years, have occupied, claimed, and operated the entire property up to the physical boundaries delineated by the yellow lines on Exhibit "21". This fact is conclusively demonstrated by the testimony of Mr. Baadsgaard, respondent's own expert witness (Tr., p. 197), Mr. Horlacher (Tr., pp. 220, 226-27), Mrs. Horlacher (Tr., pp. 258, 259, 260, 261), Dr. Oldroyd (Tr., p. 240), appellant John A. Canto (Tr., pp. 279, 280), and appellant Gerald Carte (Tr., pp. 294, 295, 297, 298, 299, 316-317).

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The boundaries of the property, as represented by respondent to Mr. and Mrs. Horlacher, Dr. Oldroyd, and Mr. Carter, and expressly admitted by respondent in his pleadings, as outlined under Point I, supra, correspond to the physical contours of the land, the "visible line" following the natural and man-made boundaries of the property: i.e., the Denver and Rio Grande Railroad right-of-way on the north, an existing fence line adjacent to Tie-Fork Creek on the east, U.S. Highway 6 on the south, and the west boundary of a pond on the west. This area, clearly delineated by visible natural and man-made monuments, fences, etc., was the area actually occupied and used by appellants and their predecessors in interest, including the plaintiff, through the partnership and corporation in which he was an owner, rather than the actual deeded description, a large portion of which includes the highway, or the parcel adjusted to border on the edge of the highway, a large portion of which then crosses over the railroad tracks themselves. Such a parcel bears no resemblance to the property actually used and claimed by appellants and their predecessors in interest.

Respondent alleges that the fence along Tie-Fork Creek was used for livestock control. Respondent, however, since the original conveyance to the partnership, Skyline Enterprises, on May 22, 1954, has always maintained and represented the fence as being the boundary line between the parties. (Tr., pp. 207, 215, 238-39, 260-61, 300-304) As such, the case comes squarely within the rule set forth by this Court

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in Baum v. Defa, 525 P. 2d 725 (Utah 1974), as follows:

> ...On the other hand, if the property on either side of such a fence is conveyed to separate parties, so that there comes into being separate ownership of the tracts on either side, and the circumstances are such that the parties should reasonably be assumed to accept the fence as the boundary between their properties, then from that time on, the time during which the fence continues to exist, should be regarded as going toward fulfilling the time requirement for the establishment of a boundary by acquiescence. ... 525 P. 2d at 727.

Respondent asserts that he did not acquiesce in the line as a boundary. Respondent, however, overlooks the representations he admittedly made, discussed previously under Point I, supra. Furthermore, he never objected to the occupation and control of the disputed property by appellants and their predecessors in interest. (Tr., pp. 220, 305) He asked permission of appellant Gerald Carter to spray weeds on the property. (Tr., pp. 303-304) After his conveyance to appellants' predecessors in interest, respondent moved his small family cabin from the disputed area, across Tie-Fork Creek, onto respondent's own property which he still retained. (Tr. pp. 131, 132, 298) When he saw appellant John A. Canto grading and leveling the disputed area, respondent never objected to Canto performing the work, but merely waved as he passed by. (Tr., pp. 271-74) Finally, when appellants' possession survey indicated that the boundary of the property might extend east of Tie-Fork Creek, respondent told appellant Gerald Carter that he had always understood the east boundary of the property to be Tie-Fork Creek, and advised Mr. Carter to go to a stationery store across the street from the Utah Co

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Courthouse, and get some quit-claim deeds, and respondent would straighten out the description. (Tr., pp. 301-302)

Respondent further alleges that acquiescence in the boundary line has not been shown for the requisite number of years. The "long period of time" is generally equated with the prescriptive period of twenty (20) years. Nevertheless, as this Court declared in Baum v. Defa, supra, "...[T]his may depend upon the circumstances of the individual case." 525 P. 2d at 727; see also, King v. Fronk, 14 Utah 2d 135, 378 P. 2d 893 (1963), and Ekberg v. Bates, 121 Utah 123, 239 P. 2d 205 (1951). See generally, Annot., 69 A.L.R. 1430 (1930), supplemented in Annot., 113 A.L.R. 421 (1938).

In this case, at any rate, the acquiescence has actually endured for more than twenty (20) years, since 1954, when respondent, wearing two hats as both grantor in the original deed and also as one of the grantees therein, in conjunction with the partnership and corporation, exercised full control over the entire property up to the boundary lines depicted by the yellow lines on Exhibit "21". Since 1963, when Dr. Oldroyd became the sole owner of Skyview Enterprises, Inc., and then sold the property to the Horlachers, it has been exclusively occupied and controlled by appellants and their predecessors in interest, up to the commencement of this proceeding. All of the elements of a boundary by acquiescence, including the requisite period of time, have been fully met.

Respondent emphasizes that appellant Gerald Carter, once he discovered the discrepancy between the erroneous deed de-

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scription and the land he actually occupied and used, attempt to buy that land from respondent. Mr. Carter, being unaware of his legal claim thereto on the basis of boundary by acquiescence, made the gesture as an attempt to placate respondent, testifying that he did so "as a matter of settling any legal action..." (Tr., p. 309)

Respondent further asserts that he used the property by parking in the disputed area and holding one family reunic there. (Tr., p. 318) Appellant Gerald Carter, after an acquaintance with the property for over twenty (20) years, testified that he had never observed a well or any evidence thereof on the property. (Tr., p. 318) Respondent himself, contrary to his representations in Respondent's Brief, pp. 5 and 22, testified that he never participated in planting grass on the property (Tr., p. 149, line 16 et seq.), such planting and re-seeding actually having been performed by the Horlachers (Tr., pp. 220-21, 297, 298) and Gerald Carter (Tr., pp. 304-305).

Other than the courtesy shown to an acquaintance and former landowner in allowing respondent to park on the proper one time, the other alleged uses (e.g., granting a pole-line easement and excepting the property in another, separate deed by respondent are mitigated by the erroneous deed description created by respondent himself as grantor in the original deed, and in any event are irrelevant in light of the representations which he admittedly made concerning the boundary lines. This also applies to such assertions as the moving of the

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toilets, which were moved to allow access for grading (Tr., p. 313), and not because of any act on respondent's part.

In the final analysis, the intention of the parties is the controlling consideration in determining boundaries. Losee v. Jones, 120 Utah 385, 235 P. 2d 132 (1951). The overwhelming weight of credible evidence, demonstrated by respondent's representations and the parties' subsequent acts in reliance thereon, clearly establish all the elements of a boundary by acquiescence along the natural and man-made boundary lines of the property, represented by the yellow lines on Exhibit "21".

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POINT III

THE TRIAL COURT ERRED IN AWARDING MONEY DAMAGES TO RESPONDENT.

Respondent asserts, in support of his award of money damages, that there was no "significant" rebuttal testimony on the matter. His derogatory appellation of Mr. John A. Canto, a professional earth mover and land leveler, as a "cat-skinner" (Respondent's Brief, p. 23), together with his denigration of Mr. Canto's testimony, again indicate his failure to carefully examine the record. Appellants have no need to resort to name-calling in order to show that there was, indeed, "significant" rebuttal testimony on this issue.

Mr. D. Lloyd Horlacher, one of appellants' predecessors in interest, testified that, when he came into possession of the property, there was a "big field of wild thorn bushes" which he was obliged to grade and clear off the property. (Tr., pp. 217, 218) In addition to the thorn bushes, the disputed area was also covered and "overgrown with weeds". (Tr., p. 221)

Appellant John A. Canto, who has been in the earth-moving business for twenty-five years (Tr., p. 276), testified that the topsoil in the disputed area was of very poor quality (Tr., p. 276), and that there was no difference in the soil condition after he performed the grading work. (Tr., p. 277) He also testified that little if any dirt was pushed into Tie-Fork Creek, and that the grading was performed in a westerly direction, rather than easterly into Tie-Fork Creek. (Tr.

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pp. 274, 277-78, 284) No one, other than the man who personally performed the grading work, was in a better position to authoritatively describe how the work was done -- especially not an occasional visitor, Grant Williams, whose testimony must be viewed in the light of his obvious bias as respondent's own brother.

Respondent alleges that the admission of his unsupported and self-serving testimony constituted harmless error. To the contrary, the testimony was properly objected to, and its admission constitutes reversible error on the part of the trial court.

In Provo River Water Users' Ass'n. v. Carlson, 103 Utah 93, 133 P. 2d 777 (1943), the Court did say that an owner of property is always entitled to testify as to its value, and to express an opinion as to its value (in condemnation proceedings). However, in Utah State Rd. Comm'n v. Steele Ranch, 533 P. 2d 888 (Utah 1975), the Court limited that holding by ruling that such testimony is incompetent unless it appears that the owner has a realistic idea of its value.

This Court definitively set forth its stand on the issue in Utah State Rd. Comm'n v. Johnson, 550 P. 2d 216 (Utah 1976), as follows:

> The case of State v. Larson [54 Wash. 2d 86, 338 P. 2d 135 (1959)] shows the trend of recent decisions and we think it correctly sets forth the law:
>
> > An owner of property may testify as to its value, ... upon the assumption that he is particularly familiar with it and, because of his ownership, knows of the uses for which it is particularly adaptable. ... However, when, as here, the owner has not used his

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> intimate experience with and knowledge of the land's uses as a basis for determining its fair market value, but has obviously determined it upon the application of an improper formula, his opinion fails to meet the test and, therefore, has no probative value.

Another case in point is that of Commonwealth, etc. v. Hopson [396 S.W. 2d 805 (Ky. 1965)] which holds:

> The landowner should not be permitted to testify as to market values unless he qualifies in accordance with the holding in Commonwealth v. Fister [373 S.W. 2d 720 (Ky. 1963)].
> That case held: "The net effect of our decision on this question is that the owner of real estate shall not be presumed adequately qualified to express an opinion of market values by reason of ownership alone."

Another case of interest on the point is that of Rotge v. Murphy [198 S.W. 2d 932 (Texas Court of Civil Appeals 1946)], wherein the court stated:

> Appellant next complains because she was not permitted to testify to the market value of the lots in question. Appellant did not show herself to be sufficiently familiar with the cash market value of these lots to qualify her to express an opinion as to their value, and therefore the court did not err in excluding her testimony as to the value of the lots.

550 P. 2d at 217-218.

Appellants respectfully submit that, just as in the cases cited by the Court in Utah State Rd. Comm'n v. Johnson, supra, there was never any showing that respondent in this case had any expertise whatsoever with respect to property values or other surrounding circumstances, and therefore, he was not competent to testify by reason of previous ownership alone. In the Johnson case, supra, the owner testified as to what the property was worth to him personally, and this Court held the admission of such testimony to be reversible error.

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> The basis upon which the owner stated the value of the property was not permitted by law. What the property is worth to a seller is not a correct basis for an opinion [citing United States v. Petty Motor Co., 327 U.S. 372 (1946)], and the motion to strike the answer should have been granted. 550 P. 2d at 217.

In the present case, as in Johnson, supra, the only evidence upon which the court awarded damages was respondent's flat assertion as to what the property was worth to him. On the basis of Johnson, supra, such award constitutes reversible error. See, Burke v. Thomas, 313 P. 2d 1082 (Okla. 1957).

Respondent asserts that the property is suitable for potential summer homes on half-acre lots (Tr., pp. 104-105), and his expert witness, Mr. Baadsgaard, also made his estimate of value upon the same erroneous assumption. Such use is based upon a legal impossibility.

The business property is currently zoned by Utah County as T & S-1, Trade and Services. The surrounding area, due to watershed considerations, is currently zoned CE-1, Critical Environmental. The current uses of the property, e.g., motel, service station, restaurant, and trailer parking, are all specifically permitted by the T & S-1 zoning designation. Utah County, Utah Rev. Zoning Ordinance, as amended, § 4-5-8 (B) and (C) (1976).

On the other hand, summer homes are not permitted under CE-1 zoning. Id., § 4-5-5 (B) and (C). Even if a variance were granted to change the zoning to CE-2, Critical Environment zoning which does permit seasonal homes, the minimum lot size requirement thereunder is twenty (20) acres, an

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area more than twice the size of the entire property in question. Id., § 4-5-6 (C) and (D); § 4-6-4 (F) (4).

In Quagliana v. Exquisite Home Builders, Inc., 538 P. 2d 301 (Utah 1975), the defendant builders promised to locate plaintiff's home in compliance "with all zoning ordinances and regulations and all building restrictions and protective covenants governing said real property." This Court found that the performance bargained for (i.e., a home with a view of the valley) was legally impossible under existing zoning law, and held:

> [A] designer who undertakes to situate proposed construction at a particular site, pursuant to his plot plan, is required to do so in compliance with applicable zoning ordinances and restrictive covenants. 538 P. 2d at 308-09.

There is not one shred of evidence in the record to demonstrate that respondent took any of the petition-and-amendment steps required to obtain a zone change under Id., § 4-1-7, other than "discussing the possibilities of rezoning with a local official". (Respondent's Brief, p. 26; Tr., p. 132) Such action does not constitute a formal petition for variance, which could not have been granted anyway, under current zoning law, and therefore any use of the proper other than those expressly permitted within the zone, is expressly prohibited under § 4-1-11, Utah County, Utah Rev. Zoning Ordinance, supra. See, Morgan County v. Stephens, 5 P. 2d 1340 (Utah 1974). Appellants respectfully submit, therefore, that the award of damages by the trial court, based on respondent's testimony of what the property was w

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to him (i.e., for summer homes), was erroneous on this additional ground, and that the "highest and best use" upon which the award was partly predicated is not permitted by law and is therefore invalid.

Respondent alleges that he has not sought to take advantage of the substantial improvements made on the property by appellants and their predecessors in interest. Yet, at the same time, he claims trespass by appellants and their predecessors in interest on the disputed area. If that were true, then such supposed trespass dates back to 1963, when the Horlachers first came on the property, and graded and removed the thorn patch and weeds which infested the area. (Tr., pp. 217, 218, 221) This principle is explained in 22 Am. Jur. 2d Damages § 133 (1965), as follows: "Notice, though, that it is the present value of the land in its condition immediately prior to the tort which is important. The court will not require the defendant to pay damages based upon a value which assumes that the land had been changed (for example, from wild to cultivated land) to the most profitable use". (Emphasis added.)

Respondent thus appears to want to "have his cake and eat it, too". He seeks to expropriate the improvements made on the property and enjoy their benefit, and then seek damages for the condition of the property immediately before and after the grading in 1974, some ten years after the initial improvements were made. "If the act of the defendant is a benefit to the land and increases its value, the plain-

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tiff cannot enjoy the benefit and at the same time recover the cost of restoring the land to its former condition." 22 Am. Jur. 2d Damages § 133 (1965); see also, 22 Am. Jur. 2d Damages § 204 (1965).

Respondent makes much of the estimate of replacement cost which was ignored by the trial court, and for which he cites no Utah authority. It should be noted that Mr. Johnson's estimate was based on figures supplied by respondent, he (Mr. Johnson) never having personally been on the land (Tr., pp. 59, 61), and that topsoil was probably available in the immediate vicinity of the property, thus avoiding the lengthy and costly 98 trips alleged by respondent. (Tr., pp. 59-60) The testimony of the respondent's brother, Grant Williams, was not only biased by his relationship, but was addressed to the claim that forage for livestock was impaired by the grading, and it had nothing to do with its effect on the use of said land for summer homes.

Thus, the before-and-after test was correctly, although erroneously, applied by the trial court. See generally, Annot. 1 A.L.R. 3d 801 (1965). However, if such a test is applicable it should date back to the original alleged trespass, at the time of the thorn patch, rather than at some later date, after respondent has taken advantage of the improvements made by appellants and their predecessors in interest on the property. Respondent's discussion of punitive damages is irrelevant, having been ignored by the trial court, and merits no further discussion.

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CONCLUSION

Appellants respectfully request that the relief sought on appeal, set forth in detail in appellants' principal brief on file herein, be granted in full, and that the decision and judgment of the trial court be reversed.

Respectfully submitted,

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